

**AGREEMENT BETWEEN**

**TOWN OF NANTUCKET**

*and*

**AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES  
LOCAL 2346**

***JULY 1, 2012 – JUNE 30, 2014***

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## AGREEMENT

This Agreement entered into by the Town of Nantucket, Massachusetts, hereinafter referred to as the "Employer", and the American Federation of State, County and Municipal Employees, Local 2346, hereinafter referred to as the "Union", has as its purpose the promotion of harmonious relations between the Employer and the Union, the establishment of an equitable and peaceful procedure for the resolution of differences, and the establishment of rates of pay, hours of work and other conditions of employment.

### ARTICLE 1 – UNION RECOGNITION

- 1.1 The Employer recognizes the Union as the sole and exclusive bargaining representative for the purposes of establishing wages, hours and other conditions of employment for all employees of the Department of Public Works of the Town of Nantucket excluding temporary, emergency, office clerical, supervisory and professional employees and guards as defined in the Contract.
- 1.2 The Employer will not aid, promote or finance any labor group or organization which purports to engage in collective bargaining on behalf of those employees covered by this Agreement.

### ARTICLE 2 – UNION SECURITY

- 2.1 All present regular employees covered by this Agreement, shall, as a condition of employment, become and remain members of the Union in good standing on and after the thirty-first (31<sup>st</sup>) day following the signing of this Agreement. All future regular full-time employees shall be required to become and remain Union members on and after the thirty-first (31<sup>st</sup>) day following the date of their employment. Employees who fail to comply with the requirement shall be dismissed by the Employer within thirty (30) days after receipt of written notice to the Employer from the Union.

Each employee who elects not to join or maintain membership in the Union shall be required to pay, as a condition of employment, beginning ninety (90) days following the commencement of his/her employment, a service fee to the Union in an amount that is proportionately commensurate with the cost of collective bargaining and contract administration, but not to exceed the amount of periodic dues paid by employees who are members of the Union. Employees who fail to comply with this requirement shall be dismissed by the Employer within thirty (30) days after receipt of written notice to the Employer by the Union.

#### 2.2 TEMPORARY EMPLOYEES

Temporary employees are those employees hired to work on a temporary basis. Temporary employees are not covered by this Agreement. No full-time employee's job, pay or benefits will be impacted by the use of temporary employees.

## 2.3 EMERGENCY EMPLOYEES

Emergency employees are employees hired in excess of the Regular Crew for emergency work. Emergency employees are not covered by this Agreement.

### ARTICLE 3 – NON-DISCRIMINATION CLAUSE

- 3.1 There shall be no discrimination by the Employer against any employee because of their membership or non-membership in the Union.
- 3.2 The Employer and the Union agree not to discriminate against any individual with respect to hiring, compensation, and other terms and conditions of employment because of age, race, creed, color, religion, nationality, marital status, gender, sexual preference, ancestry or handicap, nor will they limit, segregate, or classify employees in any way to deprive any individual employment opportunities because of age, race, creed, color, religion, nationality, marital status, gender, sexual preference, ancestry or handicap.

### ARTICLE 4 – GRIEVANCE AND ARBITRATION PROCEDURES

- 4.1(a) Whenever any employee has a grievance, the following procedure shall be followed:

Step 1. The grievant shall file the grievance in writing with the Employee's Department Head within ten (10) working days after the action which serves as the basis for the grievance.

The Department Head will investigate the complaint to determine its validity and shall respond in writing within ten (10) working days. A failure to respond in writing within ten (10) working days shall be deemed an unsatisfactory answer.

Step 2. If the grievance remains unsettled, it should be submitted along with the Department Heads response and any pertinent documents to the Town and County Manager within ten (10) working days

The Town and County Manager will issue a written decision determining the validity of the complaint within fourteen (14) working days after its receipt and may take such action as he/she thinks appropriate, including, if necessary, developing a plan to remedy the problems complained of.

Step 3. If the grievance remains unsettled, a response and all pertinent documents attached with a letter should be submitted to the Board of Selectman within ten (10) working days of the response of the Town and County Administrator.

The Board of Selectman will issue a written decision determining the validity of the grievance within fourteen (14) working days after its receipt and may take such action as it thinks appropriate, including if necessary, developing a plan to remedy the problem(s) grieved.

A failure to respond in writing shall be deemed to be an unsatisfactory answer, and the Union may proceed to arbitration in accordance with Arbitration pursuant to 4.2 of this Agreement.

- 4.1(b) In the event of any failure to comply with the provisions of this Article, the Grievance shall be dismissed and shall not be valid under this grievance procedure.

#### 4.2 ARBITRATION PROCEDURE

Grievances remaining unsettled after having been fully processed pursuant to the provisions of Article 4.1, shall be submitted to a single arbitrator from the list of the American Arbitration Association ("AAA"), and the matter shall be arbitrated in accordance with the rules of the AAA. The matter shall be submitted for adjudication under this Article upon the request of the Union, the Employer, or both, but not by an individual employee, provided such request is made within (30) calendar days after the decision of the Employer or the Union has been given to the other party (4.1(a), Step 3). The Employer shall have equal rights with the Union to initiate arbitration procedures under the Agreement and may refer to arbitration any controversy which divides the parties. The cost of the Arbitrator and the cost of the submission fees shall be borne equally by the Employer and the Union. The decision of the Arbitrator shall be final and binding upon both parties; however, the Arbitrator shall not have the power to add to, subtract from, or modify any of the terms of this Agreement.

### ARTICLE 5 – SENIORITY

#### 5.1 TRIAL PERIOD

All new employees shall be hired on a ninety (90) day trial period and shall work under the provisions of this Agreement, within which time they may be dismissed without recourse by the Union under the grievance and arbitration procedure.

- 5.2 Seniority is the employee's total accumulated service as a regular full-time employee with the Department of Public Works, excluding any service prior to previous loss of seniority. For purposes of a reduction in force, layoff and recall only, qualifications, ability and experience shall be the determining factors. Seniority shall be the determining factor only where qualifications, ability and experience are relatively equal. The determination of qualifications, ability and experience shall be set aside only if arbitrary and capricious.

- 5.3 Break in Seniority: Seniority shall be broken when an Employee:

- (a) Terminates voluntarily,
- (b) Is discharged,
- (c) Exceeds an authorized leave-of absence without written mutual agreement, or
- (d) Is laid off for a period in excess of twelve (12) months.

## ARTICLE 6 – PROMOTIONS

- 5.1 Job openings to a higher paying position, within the classifications of work covered by this Agreement, shall be filled as follows: such openings shall be posted for a period of five (5) days. All employees shall have the opportunity to apply for promotion. If the ability and qualifications of bidders are equal, the more senior employee shall be selected. If, however, in the Employer's opinion no employee has the necessary qualifications to perform the required work, the Employer may fill the position from outside of the bargaining unit. The Employer shall notify the bidding employees of its decision within two weeks. Bidding employees may grieve if dissatisfied with the decision of the Employer. If the Employer decides none of the bidders are qualified, he may continue to attempt to fill the position beyond the two week period.
- 6.2 Any employee who is demoted or promoted and experiences a change in salary will use the effective date of that salary adjustment for all future salary adjustments.

## ARTICLE 7 – HOURS OF WORK

- 7.1 Except for the Landfill Operation and part-time employees, the regular work week for employees covered by this Agreement shall consist of five (5), eight (8) hour days, exclusive of lunch periods, Monday through Friday inclusive, to be followed by two (2) consecutive days off.
- 7.2 The Employer shall have the right to maintain three (3) shifts, and operate the Landfill on a seven (7) day basis. The Employer shall also retain its right to establish a third shift on a seasonal or year-round basis. In the event an employee's scheduled duty is cancelled on less than one week's notice, he/she shall be paid for the hours as scheduled.
- 7.3 Employees at the Landfill shall be assigned on a weekly rotation basis to cover established shifts in order that overtime may be divided as equally as possible among those employees assigned.
- 7.4 All work scheduled for Saturday and Sunday shall be paid at the rate of time and one-half the employee's regular straight time hourly rate of pay (Article 26), provided the employee has worked the assigned days that week, excepting there from one day's covered sick leave (13.3). In the event an employee takes an assigned day off, other than herein set out (13.3), the employee shall not receive overtime pay in accordance with this section (7.4) but instead all overtime hours shall be paid under Article 8.1. All work scheduled for Saturday and Sunday must be worked as required. Employees assigned Saturday or Sunday work are guaranteed a minimum of two hours pay.
- 7.5 In the event of emergencies, snow storms, Acts of God, etc., the normal shifts and hours of work, as set forth herein shall be extended.
- 7.6 The Employer will establish 2 one person, week long, on-call duty team for emergency work for the entire year on a rotating basis. The on-call teams shall consist of a lead person for the Highway Division and a lead person for the Wastewater Division. The on-call person shall receive \$350.00 plus pay for all overtime hours worked (including guaranteed minimums). On-call duty will be scheduled from 3:30 pm Thursday to 7:00 am Thursday of the subsequent week. The Employer will establish a

rotation schedule for on-call duty which will equalize to the extent practicable, such duty among the qualified employees. Which employees are qualified will be determined by the employer. On weekends between Memorial Day and Labor Day, with approval of the Department Head or designee, a 2<sup>nd</sup> two man team may be called in to assist with trash or dead deer removal.

- 7.7 An employee who is assigned work in an emergency for more than twelve (12) hours in a 24-hour period will be entitled to a 4-hour rest period. The employee will be entitled to his/her regular pay for the four (4) hours.
- 7.8 In the event of a pending storm (snow, hurricane, etc.) standby teams shall be paid at the rate of \$7.00 per hour until called in; or, standby is called off.

#### ARTICLE 8 – OVERTIME

- 8.1 All time worked in excess of forty (40) hours in any one week; or, more than eight (8) hours in any one day, shall be paid as overtime at the rate of time and one-half the employee's regular straight time hourly rate of pay. All approved leave shall be synonymous with work. All time worked before 7:00 am or after 3:30 pm, unless mutually agreed upon, shall be paid at the rate of one and one-half (1 ½) the employee's regular straight time hourly rate of pay. Probationary employees are exempt from this Article.
- 8.2 Any employee called back to work on the same day after having completed their assigned work and left their place of employment and before their next regular scheduled start time, shall be paid at the rate of time and one-half for all hours worked on recall. Recall shall be a guarantee of:
  - (a) Between the hours of 10:00 pm and 4:00 am: Minimum of three (3) hours
  - (b) All hours before 10:00 pm and after 4:00 am: Minimum of two (2) hours
- 8.3 There shall be no pyramiding of overtime.
- 8.4 In the event a regular full-time employee is absent from work one (1) day or more and the Employer desires to fill such position temporarily, the Employer shall first give regular full-time employees, who are not working that day and who are available for work, the opportunity to perform such work.
- 8.5 Overtime shall be divided as equally as possible among those employees within the particular classification. The Town will make every reasonable effort to equalize overtime opportunities for employees. Overtime selection shall be made from employees who are able to do the particular work. The Town will attempt to offer overtime first to the qualified employees with the fewest overtime hours.
- 8.6 The work week shall not be changed to avoid payment of overtime.
- 8.7 Supervisors shall not perform any collective bargaining work other than that deemed reasonable or in case of emergency.



8.8 In the event an Employee is required to work in excess of a standard work week of forty (40) hours, the Department Head and Employee are encouraged to cooperatively develop appropriate schedules to compensate for overtime hours. Compensatory time, equivalent to the overtime requirement, may be granted by the department head, in accordance with the following:

- (a) Compensatory time shall be accumulated at the rate of 1½ times the number of hours worked.
- (b) Compensatory time shall accumulate for hours worked during paid holidays.
- (c) Request for compensatory time off must be submitted on the Department's "Leave Request Form" at least one week in advance of dates requested.
- (d) Compensatory time may be used the day before or after a holiday, vacation or sick leave.
- (e) Accumulated compensatory time may not exceed 40 hours. After an employee has reached an accumulated balance of 40 hours of compensatory time, all further overtime will be paid at regular overtime rates.
- (f) Requests for compensatory time off may be made at a minimum of one hour and not to exceed three days.
- (g) The employee must record all compensatory time taken or accumulated on his/her Time Card.

#### ARTICLE 9 – UNION REPRESENTATIVE

9.1 Any steward selected shall be from the regular employees of the Employer. The Union shall immediately notify the Employer, in writing, of the selected steward and its officers.

#### ARTICLE 10 – HOLIDAYS

10.1 The following State legal holidays shall be paid holidays, providing the holiday falls on a scheduled work day, or day celebrated as such, and regular employees shall be entitled to holiday pay if such employee works on their regularly scheduled work day before and after the holiday or their absence on such days is due to an illness and they present a written doctor's excuse reasonably acceptable to the Town.

NEW YEAR'S DAY	LABOR DAY
MARTIN LUTHER KING DAY	COLUMBUS DAY
PRESIDENT'S DAY	VETERANS' DAY
PATRIOTS DAY	THANKSGIVING DAY
MEMORIAL DAY	CHRISTMAS DAY
INDEPENDENCE DAY	

10.2 Regular full-time employees shall be entitled to holiday pay of eight (8) hours, at the regular straight time hourly rate of pay, provided said employee has met the eligibility requirements specified in 10.1, above.

10.3 FLOATING HOLIDAY

In addition to the Holidays in 10.1, all permanent full-time and permanent part-time Employees shall receive one day at straight time pay as a "Floating Holiday" that must be used between November 1<sup>st</sup>

and the following April 1<sup>st</sup> of each year. Any employee required by the Department Head to work to maintain the operation of the Department MUST work. Under no circumstances will the operations become disrupted because of this floating holiday.

- 10.4 Work on holidays will not be required except in emergencies. Employees who work on the holiday (10.1) or the day celebrated as such, shall be paid for all hours worked at time and one-half the regular straight time hourly rate of pay in addition to the eight (8) hours holiday pay set forth in section 10.2.
- 10.5 To be entitled to holiday pay (10.2) for the holidays set forth in section 10.1, the employee must have completed his/her ninety (90) day Probationary Period (5.1).

#### **ARTICLE 11 – VACATION**

- 11.1 Vacation shall be as follows:

Vacation leave earned shall be computed from the date of employment with the Town. However, an Employee shall not be entitled to vacation leave until the completion of the first six months of service.

- 11.2 Vacation time shall accrue monthly starting from the date of hire. All permanent (full-time) employees shall be entitled to accrue vacation each year on the following basis:

<b><u>Length of Service</u></b>	<b><u>Vacation Allowance</u></b>
Date of Hire, but less than 5 years	80 hours per year
After 5 years, but less than 10 years	120 hours per year
After 10 years, but less than 20 years	160 hours per year
After 20 years	200 hours per year

- 11.3 Permanent (part-time) Employees shall receive vacation pay on a pro rated basis, based on the number of hours scheduled each workweek.
- 11.4 Vacations shall be granted by the Department Head at such time as in the opinion of the Employer will cause the least interference with the performance of the regular work of the Department. Vacations shall not be accumulated from one year to the next, but must be taken in the anniversary year in which they are due. Any balance will be carried over, upon request, for a period of 6 months, upon approval of Department Head.
- 11.5 So far as practical, first choice of vacation dates shall be on the basis of length of employment with the Town.
- 11.6 When an Employee leaves the employ of the Town, they shall be paid for all unused vacation accrued to the last day worked. In the event of the death of an Employee, any accumulated vacation pay shall be paid to his or her estate.
- 11.7 In unusual situations, absences due to personal reasons, or illness in excess of the amount authorized by the sick leave plan, may be charged to vacation leave.

## **ARTICLE 12 – MEAL PERIOD**

- 12.1 Employees shall be granted a meal period of one-half (1/2) hour, unless otherwise mutually agreed upon.

## **ARTICLE 13 – SICK LEAVE**

- 13.1 All regular full-time employees covered by this Agreement shall accumulate sick leave entitlement at the rate of Ten (10) hours for each month worked (including vacation weeks). All regular Part-Time Employees shall receive sick leave on a proportionate basis.
- 13.2 In the event the earned sick leave is not used in any particular year, the unused portion shall be allowed to accumulate to a maximum of One Thousand two hundred hours. Only regular working days of the Regular Full-Time Employees and Regular Part-Time Employees shall be counted in computing sick leave (including vacation weeks).
- 13.3 Employees who are absent because of sickness or accident for a period of more than three (3) working days shall be required to present a doctor's certificate to their Department Head, stating the reason and the period of time the employee will be absent from work.
- 13.4 The above is not to be construed by any employee or by the Department Head as a subterfuge for time off, nor shall it apply in the case of any sickness or accident caused by the over indulgence of alcohol or narcotics, nor by the employee's misconduct.
- 13.5 Employees shall be paid fifty percent of their unused accumulated sick leave upon retirement, provided the employee has a minimum of ten (10) years of service and retires in accordance with the requirements of the Barnstable County Retirement Board. In the event of the death of an employee, this sick time shall be paid to his/her estate.
- 13.6 If an employee uses more than forty hours in the aggregate during a calendar year, the Employer may require medical certification for additional absences. Approved family or medical leave shall not be included in the forty hours total.

## **Article 13A – Personal Leave**

- 13A.1 Employees covered by this Agreement shall be allowed sixteen hours of personal time per calendar year, provided they give the Employer three days notice, unless such notice is not reasonably possible due to an emergency. This personal time may be taken in two-hour increments.

## **ARTICLE 14 -- BEREAVEMENT LEAVE**

### **14.1 FUNERAL ON THE ISLAND**

In the event of a death in the regular employee's immediate family (i.e., spouse, children, mother, father, mother-in-law, father-in-law, grandparents, brother, sister) the employee will be paid up to a maximum of five (5) days at their regular straight time hourly rate of pay to attend the wake and funeral, provided the wake and funeral fall on regular working days, and further provided that the employee actually attends the wake and funeral.

### **14.2 FUNERAL OFF THE ISLAND**

In the event of a death in the regular employee's immediate family (i.e., spouse, children, mother, father, mother-in-law, father-in-law, grandparents, brother, sister) the employee will be paid up to a maximum of five (5) days at their regular straight time hourly rate of pay to attend the off-island wake and funeral; provided that the employee actually attends the wake and funeral.

14.3 Foster or adopted relationships of children, mother, father, grandparents, brother, sister, shall be covered as set forth in (14.1), (14.2).

14.4 In the event more than one member of a family passes away at the same time, and the funerals fall within the same period of time, then only one (1) Bereavement Leave Pay will be awarded under this Article.

## **ARTICLE 15 -- INSURANCE**

15.1 The Town agrees to pay eighty percent (80%) of the Blue Cross-Blue Shield Master Medical Plan health insurance premium, individual or family coverage, for those regular employees who are participating in said plan.

The Town agrees to also offer the Blue Care Elect Preferred Provider Plan as an alternative to the Master Medical Plan. The Town agrees to pay ninety percent (90%) of the cost of the Blue Care Elect Plan health insurance premium, individual or family coverage, for those regular employees who are participating in said plan.

The Town agrees that the Blue Care Elect Plan offered to Employees will require only a twenty-five dollar (\$25.00) co-pay by Employees for Emergency Room visits and will provide a one year transition period from the date the PPO Plan is implemented to 1.) pay the difference between in-network and out-of-network costs for any employee who, at the time the PPO Plan is implemented, is receiving treatment from a specialist provider whose services are currently covered under the Master Medical Plan but who is not covered under the PPO Plan, and 2.) pay the difference between the in-network and out-of-network costs for any employee whose primary care physician is enrolled in the PPO Plan but drops out of the PPO network at any time, for a one year transition period following the date the physician drops out of the PPO network.

If an employee switches to the Blue Care Elect Preferred Provider Plan during the annual enrollment period, the employee will not be allowed to switch back to the Master Medical Plan after the following year's annual enrollment period.

- 15.2 The Town shall continue to provide health insurance in accordance with the provisions of M.G.L. Chapter 32B. Changes shall be made in accordance with Chapter 32B and Chapter 150E.
- 15.3 The Employer agrees to continue to maintain the present Life Insurance Plan for the regular employees.
- 15.4 The Town agrees to submit to Town Meeting a request to reimburse any Employee who incurs costs and expenses incurred in defending a criminal charge where no conviction results and the criminal charge is based on an act committed by the Employee arising out of and in the course of his/her employment.

#### **ARTICLE 16 -- RETIREMENT**

- 16.1 The Employer agrees to continue to maintain the present retirement plan for the regular employees.

#### **ARTICLE 17 -- JURY DUTY**

- 17.1 If a regular full-time employee is selected for jury duty, either for the Commonwealth or the Federal Judiciary, such employee shall be reimbursed the difference in money between what the said employee received, either from the County, State, or Federal Judiciary, and their regular straight time wages that week, providing:
  - (a) It applies only to those days the employee would actually have been scheduled to work.
  - (b) Employee must submit a bona fide receipt setting forth the actual time consumed by sitting on jury duty.
  - (c) Employees must report for work for the Employer whenever they are not required to sit on the jury during a full jury day, or in the event a sitting in is cancelled for a certain day. Upon reporting to the Employer, the Employee will be put to work, and shall do whatever work is assigned by the Employer.
  - (d) It is understood and agreed that the seniority provisions of this Agreement shall not be considered violated if employee sitting on jury duty reports for work in accordance with (17.1 c).
- 17.2 It is further agreed that in order for regular full-time employees to be entitled to jury duty reimbursement, as set forth in (17.1) MUST have completed their ninety (90) day trial period (5.1).

## **ARTICLE 18 -- INVALIDITY OF A PROVISION**

- 18.1 If any provision or provisions of this Agreement shall be held to be invalid or unenforceable, the remainder of this Agreement or the application of such provision, or provisions to persons or circumstances other than those deemed to be held invalid or unenforceable shall not be affected.

## **ARTICLE 19 -- MANAGEMENT RIGHTS**

- 19.1 It is agreed that nothing in this Agreement shall limit the Employer in the exercise of its function of management, such as, the right to hire new employees from any source it may decide, establish and change working schedules, determine the number of employees required, direct the working force, promote, demote (with the specific approval of the Board of Selectmen), transfer, discipline, suspend, or discharge including but not limited to: failure to meet working standards, incompetence, contract violations, unexcused absence, use of intoxicating beverages, narcotics, theft, dishonesty, failure to observe Employer rules and regulations which may be amended from time to time with a copy to the Union, to determine the number of employees required and hours of employment for such employees, to lay off employees for lack of work, and shall without interference, determine the number and type of vehicular equipment to be operated. The right to maintain order and efficiency is the sole responsibility of management. The Employer shall retain its rights to measure individual productivity as well as department productivity in accordance with established standards in order to maintain an acceptable productivity level. It is further agreed, that this enumeration of management rights shall not be deemed to exclude other rights not herein enumerated, except where any such rights are specifically modified or abridged by the terms of this Agreement.

The Employer may contract out any work performed by unit employees in connection with the hazardous waste collection days without further bargaining.

## **ARTICLE 20 -- WORKERS COMPENSATION**

- 20.1 The Employer shall provide workers' compensation insurance for all Employees covered by this Agreement.
- 20.2 Notwithstanding any other provision of this Agreement to the contrary, the Employer may post and fill any position absented by an Employee who remains on Workers' Compensation for a period exceeding twelve (12) calendar months. The employment rights for Employees on Workers' Compensation shall be in accordance with M.G.L. chapter 152 § 75A. Employment rights for Employees who receive lump sum settlements shall be in accordance with M.G.L. chapter 152 § 48.

## **ARTICLE 21 -- NO STRIKE CLAUSE**

- 21.1 During the term of this Agreement, it is agreed by and between the parties hereto, that there will be no strikes, lockouts, or withholding of service of any nature.

- 21.2 Participation by the Union or any employee, or group of employees, engaged in, inducing or encouraging any of the aforementioned acts or violating this provision in any way, may be a complete and immediate cause for discharge and/or whatever other action the employer may deem necessary. Any employee affected by such action shall have the right to grieve.

#### **ARTICLE 22 -- DISCIPLINARY NOTICES IN WRITING**

- 22.1 Written notices of warnings or disciplinary action shall remain in the active file of the Employer for 24 months. After 24 months any written notices of warnings or disciplinary action shall be removed to a non-active file and shall not be used against the employee in any forum or considered for future disciplinary action.

#### **ARTICLE 23 -- FOUL WEATHER GEAR, SAFETY GEAR, UNIFORMS**

- 23.1 Uniforms: The Town shall provide all uniforms, foul weather gear and necessary safety equipment as determined by the employer as it has in the past for those employees required to wear such uniforms or safety equipment as a condition of their employment. It shall be the responsibility of the employee to replace uniforms or safety equipment that is lost, stolen or damaged through negligence.
- 23.2 Licenses and Certificates: The Employer shall be responsible for payment or reimbursement of all costs pertaining to, or related to acquiring, maintaining or renewing any license or certificates the employer requires of employees to perform the duties. If a particular position requires a particular license within a particular time frame and the employee cannot achieve the required license within the parameters set forth by the employer, the employee will be responsible for any expense incurred beyond the established parameters and may be subject to discharge if the required license is not achieved.
- (a) At the request of an employee, the employer will develop with the employee a career advancement plan that includes specific certification requirements and time-lines for obtaining those certifications for each position as articulated in the applicable job description.

#### **ARTICLE 24 -- LEAVE OF ABSENCE**

- 24.1 Leaves of Absence may be granted to full-time employees who have completed two (2) years of employment with the Town, and must be approved by the Employer. All such leaves shall be put in writing in duplicate form, signed by both the Employer and the Union, and must set forth:
- (a) Specific reason for granting such leave  
(b) Length of time requested for such leave  
(c) Expiration of such leave
- 24.2 Leaves of Absence shall be without pay or other benefits under this

Agreement, but without loss of seniority. However, any employee who is proven to have been employed elsewhere during a permitted leave of absence, or fails to report back to work after the granted leave of absence, shall be considered as having terminated his/her employment with the Employer, and all seniority fringe benefits, or past service credits shall be lost, in the event said employee should be rehired by the Employer at a later date.

- 24.3 The Town of Nantucket agrees to abide by the Federal Family Medical Leave Act and the Commonwealth's Maternity or Paternity Leave Act.
- 24.4 When an employee uses all vacation, sick and personal time, the employee is responsible to pay their share of the health insurance premiums.
- 24.5 At the employee's request, available vacation, sick, compensatory and personal time can be paid out to the employee in incremental amounts to be spread out equally for the duration of the approved leave.

#### **ARTICLE 25 -- UNION DUES, CHECK OFF**

- 25.1 The Employer shall, when authorized by each employee, deduct from the first pay of each month, the Union dues for the preceding month, and the initial initiation fee, after notification to the Employer in writing by the Union that said initiation fee is due and owing, and remit the same to Frank Sadowski, AFSCME Council 93, AFL-CIO, 8 Beacon Street, Boston, MA 02108, within fourteen (14) days of said deduction by the Employer. Together with this remittance, the Employer shall forward a list of all employees from whom dues have been deducted.
- 25.2 All authorization by an employee must be in writing and signed by the employee from whose wages such deductions are to be made. Said form shall be furnished by the Union. Such authorization shall remain in effect until revoked by the employee, and shall be irrevocable for a period of one (1) year from the date the authorization is signed, or until the termination of this Agreement (including any extension, renewal, or modification thereof), whichever occurs sooner, at which time it may be revoked by written notice given by the employee to the Employer and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of such time. If no such notice is given by the employee, the employee further agrees, that the authorization and assignment shall be automatically renewed and be irrevocable for successive periods of one (1) year thereafter, or until the termination of the Agreement (including any extension, renewal, or modification thereof,) whichever occurs sooner, unless such written notice, as herein provided, is given by the employee to the Employer and the Union prior to the end of such period.
- 25.3 The Union shall notify the Employer of the name of the authorized representative and the address to which such dues collections shall be sent. In the event of any change of the designated authorized representative, the Union shall notify the Employer of such change in writing.
- 25.4 No deduction shall be made which is prohibited by applicable law. The Union and employees covered by this Agreement agree to indemnify and hold harmless the Employer against any and all claims, demands, suits or liability that might arise out of or by reason of action taken or not taken with respect to the deduction of dues and initiation fees.



## **ARTICLE 26 -- WAGES**

- 26.1 The Wage and Classification Schedules are attached hereto as Exhibit A-1 and Exhibit A-2. The employer may, in its sole discretion, grant additional merit wage increases or bonuses.
- (a) Employees hired prior to July 1, 2012 shall be compensated in accordance with Exhibit A-1
  - (b) Employees hired on or after July 1, 2012 shall be compensated in accordance with Exhibit A-2
- 26.2 Temporary, emergency and part-time employees shall not be subject to the rates of pay set forth in Article 26.1. The Employer shall determine the hourly rates of pay for such employees; however, such rates shall not exceed those set forth above.
- 26.3 Employees shall be compensated for all Saturday and Sunday and holiday work at all Waste Water Facilities at the M-4 rate, at their regular step, with a minimum of four (4) hours per day. (The provisions of 26.3 apply only to employees at the M3 rate or lower)
- 26.4 The Employer shall have the right to utilize the employees as combination employees for any and all work required by the Employer, however, if employees work in a higher rated classification, they will be paid at the higher rated classification for that work.
- 26.5 Effective July 1, 2008, all Employees shall be required to utilize direct deposit for their paychecks.
- 26.6 Effective July 1, 2014 the Town may institute a bi-weekly (aka: fortnightly) payroll.

## **ARTICLE 27 -- SHIFT DIFFERENTIAL**

- 27.1 The following shift differential shall be computed only by adding to the hourly rate of pay set forth in (26.1) when the hours are actually being worked on the shift, and shall not be added to any hourly rate being paid for Sick Leave, Bereavement Leave, Holiday Leave, Vacation Leave, etc:

On regular shifts after 5:00 p.m.: Thirty Cents (\$0.30) per hour.

## **ARTICLE 28 -- LONGEVITY PAY**

### **28.1 REGULAR FULL-TIME EMPLOYEES**

Based upon continuous years of service with the Town of Nantucket as a regular full-time employee, employees will receive Longevity Pay, as follows:

- (a) After completion of Five (5) Years of Continuous Service: 2% above Base Yearly Pay
- (b) After completion of Ten (10) Years of Continuous Service: 3% above Base Yearly Pay
- (c) After completion of Fifteen (15) Years of Continuous Service: 4% above Base Yearly Pay

(d) After completion of Twenty (20) Years of Continuous Service: 5% above Base Yearly Pay

28.2 Any employee hired Between July 1, 2008 and June 30, 2012, shall be subject to the following longevity pay schedule instead of the longevity pay schedule outlined above:

- (a) After completion of ten (10) years of continuous service: \$1,000
- (b) After completion of fifteen (15) years of continuous service: \$1,200
- (c) After completion of twenty (20) years of continuous service: \$1,500
- (d) After completion of twenty-five (25) years of continuous service: \$1,700

28.3 For employees compensated according to Exhibit A-1 only; In the event a regular full-time employee does not work a full year, then the amount set forth in (28.1) and (28.2) shall be applied on a pro rata basis.

28.4 Any new employee hired on or after July 1, 2012 shall be subject only to the years of service and longevity percentages listed in 28.1, which shall be included in their base pay.

#### Article 29 – Miscellaneous

29.1 Recognition Awards: The Department Head and the Union shall form an Awards Committee to review for possible recognition an employee who's initiative or actions result in the following:

- (a) Substantial savings in cost or time are taken and met.
- (b) Performance above and beyond normal duties.
- (c) Outstanding work habits are exhibited, i.e., attendance, safety awareness, leadership.

#### Article 30 – Duration of Agreement

30.1 This agreement shall take effect as of the 1<sup>st</sup> day of July, 2012, and shall remain in full force and effect until the 30<sup>th</sup> day of June, 2014, except as set forth in (30.4) and shall then and thereafter renew itself from year to year, unless either party to the Agreement gives written notice to the other party, not later than the Fifteenth day of December of the preceding calendar year prior to any date of expiration of a desire to change, amend or terminate the terms of conditions hereof.

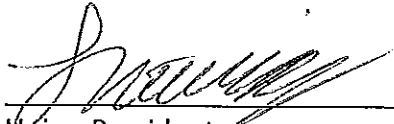
30.2 If notice is given as set forth in (30.1), then the parties shall commence negotiations not later than January 15<sup>th</sup> of that year, prior to budget submission by the Employer to the Town.

30.3 During the course of negotiations for amendment or renewal of this Agreement, the terms and conditions herein set forth shall continue in effect until a new agreement is reached.

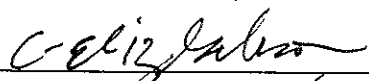
30.4 Recognizing the fiscal constraints posed by Proposition 2½, in the event future Town Meetings do not appropriate sufficient monies to fund the wage increases agreed upon in Article 26, it is agreed by both parties that those portions of this Agreement, and only those portions, may be discussed and if necessary amended as may be agreed upon at such time. This will not be considered an opening of the negotiated agreement for further negotiations.

30.5 With the exception of the retroactive wage payment in Article 26 the 07-01-08 to 06-30-11 collective bargaining agreement shall remain in full force and effect until 06-30-12.

IN WITNESS WHEREOF, WE HAVE HEREUNTO JOINED IN THE AGREEMENT AS OF THE 11 DAY OF July 2012.

  
\_\_\_\_\_  
Union President

\_\_\_\_\_  
Union Business Agent

  
\_\_\_\_\_  
Chairman, Board of Selectmen (on behalf of)

**PUBIC WORKS CONTRACT****WAGE SCALE 2012 - 2014 (Employees hired prior to July 1, 2012)****EXHIBIT A-1**

POSITION M1	Step	(2.5% ATB)	(2.5% ATB)
		July 1, 2012	July 1, 2013
Start	1	\$20.57	\$21.09
After 3 Months	2	\$21.19	\$21.72
After 12 Months	3	\$21.82	\$22.37
After 24 Months	4	\$22.48	\$23.04
After 36 Months	5	\$23.15	\$23.73
After 48 Months	6	\$23.85	\$24.45
After 60 Months	7	\$24.56	\$25.17
After 72 Months	8	\$26.06	\$26.71

POSITION M2	Step	July 1, 2012	July 1, 2013
Start	1	\$22.38	\$22.94
After 3 Months	2	\$23.05	\$23.63
After 12 Months	3	\$23.74	\$24.33
After 24 Months	4	\$24.45	\$25.06
After 36 Months	5	\$25.18	\$25.81
After 48 Months	6	\$25.94	\$26.59
After 60 Months	7	\$26.72	\$27.39
After 72 Months	8	\$28.34	\$29.05

POSITION M3	Step	July 1, 2012	July 1, 2013
Start	1	\$23.77	\$24.36
After 3 Months	2	\$24.48	\$25.09
After 12 Months	3	\$25.22	\$25.85
After 24 Months	4	\$25.96	\$26.61
After 36 Months	5	\$26.74	\$27.41
After 48 Months	6	\$27.55	\$28.24
After 60 Months	7	\$28.37	\$29.08
After 72 Months	8	\$30.09	\$30.85

POSITION M4	Step	July 1, 2012	July 1, 2013
Start	1	\$25.03	\$25.66
After 3 Months	2	\$25.78	\$26.42
After 12 Months	3	\$26.56	\$27.22
After 24 Months	4	\$27.35	\$28.03
After 36 Months	5	\$28.17	\$28.87
After 48 Months	6	\$29.02	\$29.74
After 60 Months	7	\$29.89	\$30.64
After 72 Months	8	\$31.69	\$32.49

POSITION M5	Step	July 1, 2012	July 1, 2013
Start	1	\$26.32	\$26.98
After 3 Months	2	\$27.11	\$27.79
After 12 Months	3	\$27.92	\$28.62
After 24 Months	4	\$28.76	\$29.48
After 36 Months	5	\$29.62	\$30.36
After 48 Months	6	\$30.51	\$31.28
After 60 Months	7	\$31.43	\$32.21
After 72 Months	8	\$33.33	\$34.17

POSITION M6	Step	July 1, 2012	July 1, 2013
Start	1	\$27.11	\$27.79
After 3 Months	2	\$27.92	\$28.62
After 12 Months	3	\$28.76	\$29.48
After 24 Months	4	\$29.62	\$30.36
After 36 Months	5	\$30.51	\$31.28
After 48 Months	6	\$31.43	\$32.21
After 60 Months	7	\$32.37	\$33.18
After 72 Months	8	\$34.33	\$35.19

POSITION M7	Step	July 1, 2012	July 1, 2013
Start	1	\$28.04	\$28.75
After 3 Months	2	\$28.88	\$29.61
After 12 Months	3	\$29.76	\$30.50
After 24 Months	4	\$30.65	\$31.41
After 36 Months	5	\$31.57	\$32.36
After 48 Months	6	\$32.51	\$33.33
After 60 Months	7	\$33.49	\$34.32
After 72 Months	8	\$35.52	\$36.40

M1 - Laborer

M2 - Jr. Equipment Operator, Mechanic

M3 - Sr. Equipment Operator, Sr. Mechanic

M4 - Maintenance Technician, Crew Chief, Arborist, Jr. Wastewater Plant Operator

M5 - Working Foreman, Wastewater Plant Operator

M6 - General Foreman, Asst. Wastewater Plant Chief Operator

M7 - Wastewater Plant Chief Operator

**PUBLIC WORKS CONTRACT**

**PROJECTED WAGE SCALE 2012-2014 (Employees hired on/after July 1, 2012)**

**EXHIBIT A-2**

Position	M1	(2.5% ATB)	(2.5% ATB)
		1-Jul-12	1-Jul-13
Starting (Base)		\$20.57	\$21.09
After 5 Years		\$20.98	\$21.51
After 10 Years		\$21.19	\$21.72
After 15 Years		\$21.39	\$22.59
After 20 Years		\$21.60	\$22.14

Position	M2	1-Jul-12	1-Jul-13
		1-Jul-12	1-Jul-13
Starting (Base)		\$22.38	\$22.94
After 5 Years		\$22.83	\$23.40
After 10 Years		\$23.05	\$23.63
After 15 Years		\$23.28	\$24.57
After 20 Years		\$23.50	\$24.09

Position	M3	1-Jul-12	1-Jul-13
		1-Jul-12	1-Jul-13
Starting (Base)		\$23.77	\$24.36
After 5 Years		\$24.25	\$24.85
After 10 Years		\$24.48	\$25.10
After 15 Years		\$24.72	\$26.10
After 20 Years		\$24.96	\$25.58

Position	M4	1-Jul-12	1-Jul-13
		1-Jul-12	1-Jul-13
Starting (Base)		\$25.03	\$25.66
After 5 Years		\$25.53	\$26.17
After 10 Years		\$25.78	\$26.43
After 15 Years		\$26.03	\$27.48
After 20 Years		\$26.28	\$26.94

Position	M5	1-Jul-12	1-Jul-13
		1-Jul-12	1-Jul-13
Starting (Base)		\$26.32	\$26.98
After 5 Years		\$26.85	\$27.52
After 10 Years		\$27.11	\$27.79
After 15 Years		\$27.37	\$28.90
After 20 Years		\$27.64	\$28.33

Position	M6	1-Jul-12	1-Jul-13
Starting (Base)		\$27.11	\$27.79
After 5 Years		\$27.65	\$28.34
After 10 Years		\$27.92	\$28.62
After 15 Years		\$28.19	\$29.77
After 20 Years		\$28.47	\$29.18

Position	M7	1-Jul-12	1-Jul-13
Starting (Base)		\$28.04	\$28.75
After 5 Years		\$28.60	\$29.33
After 10 Years		\$28.88	\$29.61
After 15 Years		\$29.16	\$30.80
After 20 Years		\$29.44	\$30.19

M1 - Laborer

M2 - Jr. Equipment Operator, Mechanic

M3 - Sr. Equipment Operator, Sr. Mechanic

M4 - Maintenance Technician, Crew Chief, Arborist, Jr. Wastewater Plant Operator

M5 - Working Foreman, Wastewater Plant Operator

M6 - General Foreman, Asst. Wastewater Plant Chief Operator

M7 - Wastewater Plant Chief Operator

**TOWN OF NANTUCKET  
ALCOHOL TESTING AND CONTROLLED SUBSTANCES TESTING  
POLICY AND PROCEDURES**

**1.0 POLICY**

It is the policy of the Town of Nantucket that the use of alcohol and controlled substances by Department of Public Works employees, who are on duty, is prohibited. This policy incorporates any off duty use or misuse of alcohol or controlled substances that results in a positive alcohol or controlled substances test while on duty. While the Town of Nantucket establishes this policy to comply with the Department of Transportation (DOT) regulations, 49 CFR Parts 382, et al for employees with commercial driver's licenses, the policy also applies to the other employees covered by the DPW union contract.

**2.0 DEFINITIONS**

**2.1 Alcohol:**

The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular alcohols including methyl and isopropyl alcohol.

**2.2 Alcohol Concentration:**

Also called alcohol content, the alcohol in a volume of breath as indicated by an evidential breath test, such as a breathalyzer, expressed in terms of grams of alcohol per 210 liters of breath.

**2.3 Alcohol Use:**

The consumption of any beverage, mixture or preparation, including any medications, containing alcohol.

**2.4 Breath Alcohol Technician:**

(BAT) An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device. (EBT).

**2.5 Commercial Driver's License:**

(CDL) A driver's license required by the Commonwealth of Massachusetts for the operation of a commercial motor vehicle.



## **2.6 Commercial Motor Vehicle:**

(CMV) A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- (1) has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- (2) has a gross vehicle weight rating of 26,001 or more pounds; or
- (3) is designed to transport 16 or more passengers, including the driver; or
- (4) is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded.

## **2.7 Confirmation/Confirmatory Test:**

In alcohol testing, a second test which follows a screening test with a result of 0.02 grams or greater of alcohol per 210 liters of breath, that provides quantitative data of alcohol concentration.

For controlled substance testing, a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen and that uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

## **2.8 Controlled Substance:**

In this policy the terms "drugs" and "controlled substances" are interchangeable and have the same meaning unless otherwise provided. These terms shall include marijuana, cocaine, opiates, including heroine, phencyclidine (PCP), and amphetamines, including methamphetamine.

## **2.9 Controlled Substance Screening/Testing:**

Is a procedure to screen and/or test urine samples for the purpose of detecting the presence of amphetamines, cocaine, metabolites, opiate metabolites, including heroine, phencyclidine, and marijuana metabolites.

## **2.10 Driver:**

Any person who operates a commercial motor vehicle (CMV) including, but not limited to, full-time drivers, temporary, occasional, casual or intermittent drivers, leased drivers, independent owner-operator contractors who are either directly or indirectly employed by the Town. For the purposes of pre-employment testing, the term driver includes an applicant or employee applying for a position that requires driving a commercial motor vehicle.

**2.11 Employee:**

Any person covered by the collective bargaining agreement between the Town of Nantucket and the American Federation of State, County and Municipal Employees, Local 2977A.

**2.12 Evidential Breath Testing Device:**

(EBT) Is a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath.

**2.13 GC/MS:**

Is a gas chromatography/mass spectrometry test that confirms an initial drug screen.

**2.14 Laboratory:**

Is a federal Department of Health and Human Services certified laboratory authorized by the Town to perform controlled substances screening/testing.

**2.15 Medical Review Officer:**

(MRO) A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the Town's controlled substances testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

**2.16 Performing a safety-sensitive function:**

Is any period when a driver is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.

**2.17 On Duty:**

Is that period of time which constitutes an employee's work day, or when he or she has been recalled to work, or when he or she may be required to drive a CMV.

**2.18 Refuse to submit to an alcohol or controlled substances test:**

A driver and/or employee refuses to submit to testing when he or she:

- (1) fails to provide adequate breath for testing without a valid medical explanation after receiving notice of the requirement for breath testing; or

- (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after receiving notice of the requirement for urine testing; or
- (3) engages in conduct that obstructs the testing process.

#### **2.19 Safety-Sensitive Function:**

Is any of the on-duty functions listed below:

- (1) All time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer.
- (2) All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSR's), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time, including, but not limited to, inspecting service brakes, including trailer brake connections, parking brakes, steering mechanism, lighting devices and reflectors, tires, horn, windshield wipers, rear vision mirrors, coupling devices, fire extinguisher, spare fuses, or warning devices for stopped vehicles.
- (3) All time spent at the driving controls of any commercial motor vehicle.
- (4) All time spent on or in a commercial motor vehicle.
- (5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
- (6) All time spent performing the driver requirements associated with an accident.
- (7) All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle.

#### **2.20 Screening Test:**

(Screen or initial test) In alcohol testing, it is the initial procedure to determine if the driver has a prohibited concentration of alcohol in his or her system. In controlled substances testing, it is an immunoassay screen to eliminate "negative" urine specimens from further consideration.

#### **2.21 Split Specimen/Sample:**

For controlled substances testing, it is a collection of urine divided into two containers for testing and retesting purposes.

## **2.22 Substance Abuse Professional:**

(SAP) is a licensed physician (medical doctor or doctor of osteopathy) or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

## **3.0 APPLICABILITY**

The Federal Highway Administration, Department of Transportation rules related to controlled substances and alcohol use and testing (49 CFR Parts 382, et. al.) apply to every person who operates a commercial motor vehicle in interstate or intrastate commerce and is subject to the commercial driver's license requirements of part 383 of this subchapter. This policy and procedure is, therefore, applicable to every employee in a position that requires that employee to have a commercial driver's license (CDL) and to applicants to such positions. This policy and procedure, through the collective bargaining agreement between the Town of Nantucket and AFSCME, Local 2977A, is also applicable to every employee covered by said agreement.

## **4.0 ALCOHOL and CONTROLLED SUBSTANCES PROHIBITIONS**

### **4.1 Alcohol Prohibitions:**

The DOT Rules prohibit drivers from using alcohol while on duty and within four hours of going on duty and operating a commercial motor vehicle or performing a safety-sensitive function. This policy prohibits all employees in the Nantucket DPW union from using alcohol while on duty and within four hours of going on duty.

#### **4.1.1 Drivers and employees shall not:**

- (1) use alcohol while on duty.
- (2) report for duty or remain on duty within four hours of having consumed alcohol.
- (3) report for duty or remain on duty with an alcohol concentration of 0.04 or greater.
- (4) use alcohol for a period of eight hours or until post-accident alcohol testing has been done, whichever comes first, after the driver or employee has had an accident which involved the loss of human life or which resulted in the driver or employee receiving a citation for a moving traffic violation arising out of the accident.

### **4.2 Controlled Substances Prohibitions:**

The Department of Transportation Rules prohibit drivers from reporting for duty or remaining on duty when the driver uses any controlled substances, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely

affect the driver's ability to safely operate a commercial motor vehicle. The Town may require a driver to inform his or her supervisor of any therapeutic drug use by the driver. This section also applies to all employees in the Nantucket DPW union.

#### **4.2.1 Drivers and employees shall not:**

- (1) report for duty or remain on duty while using any controlled substance, except when a physician has prescribed a substance which does not adversely affect the driver's ability to safely operate a commercial motor vehicle or the employee's ability to safely perform his/her duties.
- (2) report for duty, remain on duty, or perform a safety-sensitive function, if he or she has tested positive for controlled substances.

**4.2.2** A driver or employee who has had an accident which involved the loss of human life or which resulted in the driver or employee receiving a citation for a moving traffic violation shall submit to a controlled substances test by the employer within 32 hours of the accident.

## **5.0 TESTING**

There are six situations in which an employee shall be tested for the presence of controlled substances and/or alcohol in his or her system. They are: (1) pre-employment testing, (2) post-accident testing, (3) reasonable suspicion testing, (4) random testing, (5) return to duty or work testing, and (6) follow-up testing.

### **5.1 Pre-Employment Testing:**

Prior to the first time a driver performs safety-sensitive functions, for the Town; or, an employee begins working for the Town, the driver or employee shall undergo testing for controlled substances. The driver shall not perform any safety-sensitive functions and the employee shall not begin work, until the employer has received a verified negative test result from the medical review officer for the controlled substances test.

### **5.2 Post-Accident Testing:**

As soon as is practicable following an accident involving a commercial motor vehicle, in which there was a fatality or which resulted in the driver or employee receiving a citation for a moving traffic violation, the driver or employee shall submit to alcohol and controlled substances testing. The driver or employee shall remain readily available for eight hours following the accident to submit to an alcohol test. The driver or employee shall remain readily available for 32 hours following the accident to submit to a controlled substances test. The driver or employee shall not consume any alcohol for eight hours following the accident or until after an alcohol test has been concluded.

- 5.2.1** The results of a breath or blood test for the use of alcohol or a urine test for the use of controlled substances conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of post-accident testing when necessary, providing that such tests conform to applicable Federal, State or local requirements, and that the results of the tests are obtained by the employer.

### **5.3 Reasonable Suspicion Testing:**

The employer shall require a driver or employee to submit to an alcohol test and/or controlled substances test when a supervisor or department representative has reasonable suspicion to believe that the driver or employee has violated the Town's and/or DOT's prohibitions concerning the use or possession of alcohol and/or controlled substances. The supervisor or department representative shall base his or her determination that reasonable suspicion exists to require the driver or employee to undergo an alcohol test and/or controlled substances test on specific, contemporaneous, articulable, observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances. The supervisor or department representative making the observations shall document in writing the specific facts, symptoms, or observations which form the basis for his or her reasonable suspicion.

- 5.3.1** The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver or employee.
- 5.3.2** Alcohol testing is authorized under the reasonable suspicion testing section only when the observations required to make the determination (See. 5.3, supra) that reasonable suspicion exists are made during, just preceding, or just after the period of the work day that the driver or employee is required to be in compliance with the alcohol prohibitions and that the driver or employee is performing safety-sensitive functions.
- 5.3.3** If a reasonable suspicion alcohol test is not administered within 2 hours following the observations, the supervisor or department representative shall prepare and maintain on file a record stating the reasons the alcohol test was not administered promptly. If the test is not administered within 8 hours of the observation, the employer shall cease to attempt to administer the test and make a record of the reasons why the test was not administered within 8 hours.
- 5.3.4** The Town will not take action against any driver or employee based solely on the driver's or employee's behavior and appearance with respect to alcohol use, unless an alcohol test was administered or the driver or employee refused to be tested. This does not prohibit the Town with independent authority from taking any action otherwise consistent with law or Town or department policy.
- 5.3.5** The supervisor or department representative making the determination that reasonable suspicion exists to conduct an alcohol test and/or controlled substances test must have received 60 minutes of training on alcohol misuse and 60 minutes of training on controlled substances use.

#### **5.4 Random Testing:**

Random, unannounced alcohol testing and controlled substances testing shall be administered on a certain percentage of drivers and employees each year. Random alcohol testing shall be administered at a minimum annual rate of 10% of the average number of CDL driver positions, unless the FHWA establishes and publishes a different minimum in the Federal Register. Random controlled substances testing shall be administered at a minimum annual rate of 50% of the average number of CDL driver positions, unless the FHWA establishes and publishes a different minimum in the Federal Register. Random alcohol and controlled substances testing shall be unannounced and spread reasonably throughout the calendar year. The Town shall have the right to determine the annual number of employees to be randomly tested.

**5.4.1** The random selection process will ensure that each driver or employee has an equal chance of being tested each time selections are made.

**5.4.2** Random testing for alcohol must be performed immediately before, during, or after the performance of safety-sensitive functions by the driver; or, the regular work of the employee.

#### **5.5 Return to Duty Testing:**

Before a driver returns to duty requiring the performance of a safety-sensitive function or an employee returns to work after engaging in prohibited conduct concerning alcohol, the driver or employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

Before a driver returns to duty requiring the performance of a safety-sensitive function or an employee returns to work after engaging in prohibited conduct concerning controlled substances, the driver or employee shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

#### **5.6 Follow-Up Testing:**

Following a determination by a SAP that a driver or employee is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the driver or employee shall be subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the SAP. The driver or employee shall be subject to a minimum of 6 follow-up controlled substances and/or alcohol tests in the first 12 months. The follow-up testing may continue for up to 60 months from the date the driver or employee returns to duty.

**5.6.1** Follow-up testing for alcohol shall be performed only when the driver is performing safety-sensitive functions, immediately prior to performing safety-sensitive functions, or immediately after performing safety-sensitive functions; or, the employee is performing work for the Town, immediately prior to performing work for the Town, or immediately after performing work for the Town.

## **5.7 Refusal to be tested:**

If a driver or employee refuses to be tested, the driver or employee is treated the same as if he or she had received a positive test result. A driver or employee refuses to submit to testing when he or she:

- (1) fails to provide adequate breath for testing without a valid medical explanation after receiving notice of the requirement for breath testing; or
- (2) fails to provide an adequate urine sample for controlled substances testing without a valid medical explanation after receiving notice of the requirement for urine testing; or
- (3) engages in conduct that obstructs the testing process, including adulteration of specimen.

A driver or employee who refuses to test is subject to sanctions for positive test results.

## **6.0 SCREENING/TESTING PROCEDURES**

- 6.1 A copy of these procedures shall be given to all drivers subject to CDL testing procedures; and, to all employees covered by the Nantucket DPW collective bargaining agreement.
- 6.2 When reasonable suspicion testing, follow-up testing, return-to-duty testing or post-accident testing is authorized, at least one supervisor shall accompany the driver or employee to the collection site.
- 6.3 When random testing is authorized, a supervisor may, but is not required, to accompany a driver or employee to the collection site.
- 6.4 When a driver or employee has been identified for testing, the driver or employee will be instructed to proceed immediately to the designated collection site. Once the driver or employee has been notified to take a test, unless he or she is hospitalized, no sick or other leave may be authorized until the collection process is completed.
- 6.5 At the collection site, drivers or employees are required to present photo identification.
- 6.6 When alcohol testing is required or authorized, a saliva or breath test shall be administered by the collector also known as a Breath Alcohol Technician (BAT) to detect the presence of alcohol.
  - 6.6.1 In accordance with DOT regulations, initial and confirmatory tests may only be administered with devices meeting the requirements of the National Highway Traffic Safety Administration's (NHTSA's) Model specifications for Alcohol Screening Devices.
  - 6.6.2 An alcohol screen with a result of 0.02 grams/210 liters or greater shall be followed by a confirmation test that provides quantitative data of alcohol concentration.



- 6.2.3** A driver or employee shall follow the instructions of the BAT and shall not eat, drink, put any object or substance into his or her mouth, and, to the extent possible, not belch during the waiting period before the confirmation test.
- 6.2.4** A confirmatory alcohol test shall not be conducted in less than 15 minutes nor more than 20 minutes from an alcohol screen with a result of 0.02 grams/210 liters or greater.
- 6.2.5** If the driver or employee is unable to provide a sufficient amount of breath after reasonable attempts to do so, testing shall be discontinued and the appropriate Town official notified. The driver or employee shall be directed to obtain, as soon as practicable, an evaluation from a licensed physician, who is acceptable to the Town, concerning the driver's or employee's medical ability to provide an adequate amount of breath. If the physician determines that a medical condition has, or with a high degree of probability, could have precluded the driver or employee from providing an adequate amount of breath, the driver's or employee's failure to provide an adequate amount of breath shall not be deemed to be a refusal to take the test. The physician shall provide the Town with a written statement of his/her conclusion.
- 6.7** When a controlled substances test is required or authorized, a test of the driver's or employee's urine will be done to detect the presence of amphetamines, cocaine metabolites, opiate metabolites (including heroine), phencyclidine, and marijuana metabolites.
- 6.7.1** To deter dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks whenever possible, so that the reservoir of water in the toilet bowl always remains blue. There shall be no other source of water in the enclosure where urination occurs.
- 6.7.2** The collection site person shall ask the driver or employee who is to be tested to remove any unnecessary outer garments, such as a coat, that might conceal items or substances that could be used to tamper with or adulterate the driver's or employee's urine. The driver or employee may retain his or her wallet, but not briefcase or purse.
- 6.7.3** The driver or employee may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. In the exceptional event that there is an immediate requirement for specimen collection (e.g., an accident investigation), a public rest room may be used, providing the person collecting the specimen is of the same gender as the driver or employee being tested and accompanies the driver or employee into the rest room and ensures the integrity of the collection process.
- 6.7.4** The driver's or employee's urine specimen shall be divided into two containers by the collection site person in the driver's or employee's presence. The two samples, called "primary" and "split" shall be sent for testing to a laboratory certified by the Department of Health and Human Services.
- 6.7.5** The initial controlled substance screening shall be by enzyme immunoassay techniques test (EMIT) which shall be administered at a Town approved laboratory at Town

expense. If this initial screen yields a positive result, a GC/MS will be conducted at Town expense on the original split urine sample provided by the driver or employee.

**6.7.6** The minimum levels for positive controlled substance test results are:

DRUG GROUP	Initial EMIT	Confirmatory
	Screen (ng/mL)	GC/MS Test (ng/mL)
Amphetamines	1000	
Amphetamine		500
Methamphetamine		500*
Cocaine Metabolites	300	150**
Opiate Metabolites	300	
Morphine		300
Codeine		300
Phencyclidine	25	25
Marijuana Metabolites	50	15***

\* Specimen must also contain amphetamine at a concentration of greater than or equal to 200ng/mL.

\*\* Benzoyllecgonine

\*\*\* Delta-9-tetrahydrocannabinol-9-carboxylic acid

**6.7.7** If the driver or employee is unable to provide a sufficient amount of urine the MRO shall immediately refer the driver or employee for a medical evaluation to determine whether the driver's or employee's inability to provide a specimen is genuine or constitutes a refusal to test. If the MRO makes a determination after the completion of the examination that the driver or employee is able to provide a sufficient urine sample, the driver's or employee's refusal to do so shall be considered a refusal to test.

**6.7.8** The results of a positive EMIT controlled substances test shall be confirmed by GC/MS testing and sent to the MRO for review. The MRO verifies the positive result after review with the driver or employee. The MRO shall notify the driver or employee that he/she has 72 hours from such notification to request a retest from the split sample at another laboratory certified by the Federal Department of Health and Human Services. The retest shall be at the driver's or employee's own expense. The MRO shall coordinate the retesting of drivers.

**6.7.9** Removal from safety-sensitive duty is required by the DOT following the first positive controlled-substances test result. Removal from work for the Town is mandated by this policy following the first positive controlled-substances test result.

## **7.0 CONSEQUENCES OF PROHIBITED CONDUCT**

Drivers and employees facing disciplinary action under this section shall have all rights to a hearing and union representation provided in the aforementioned collective bargaining agreement.

- 7.1** A driver or employee who violates the alcohol prohibitions by having a confirmed alcohol test of 0.04 or more grams/210 liters shall be suspended without pay for 15 working days. A second violation with a confirmed alcohol test of .02 grams/210 liters or more shall result in discharge.
- 7.2** A driver or employee who has tested positive for alcohol or controlled substances pursuant to post-accident testing shall be discharged.
- 7.3** An applicant, including an employee being promoted, shall not receive the appointment/promotion if he/she receives a positive test result from a controlled substances test.
- 7.4** A driver or employee who, for the first time, violates the alcohol prohibitions with a confirmed alcohol test of 0.02 to 0.039 grams/210 liters, shall be suspended without pay for 15 working days. A driver or employee who, for the second time, violates the alcohol prohibitions with a confirmed alcohol test of 0.02 to 0.039 grams/210 liters, shall be discharged.
- 7.5** A driver or employee who violates the controlled substances prohibitions with a verified positive result from a controlled substances test, shall be suspended without pay for 15 working days. A second violation shall result in discharge.
- 7.6** A driver or employee who violates the prohibition against possession of alcohol or controlled substances while on duty shall be suspended without pay for 30 working days. A second violation shall result in discharge.

## **8.0 CONFIDENTIALITY REQUIREMENTS and RECORDS RETENTION**

The Town shall maintain records of all alcohol and controlled substances tests and their results in accordance with all applicable federal, state, and local laws and regulations. The Town shall implement procedures to prevent the unauthorized disclosure or distribution of these records including the results of alcohol and controlled substances tests. If a driver or employee appeals a disciplinary action taken against him/her for violation of the alcohol or controlled substances prohibitions in a judicial or administrative proceeding, he/she waives the confidentiality required with regard to such records.

- 8.1** The employer shall prepare and maintain an annual calendar year summary of the results of its alcohol and controlled substances testing programs, and shall submit the report to Federal Highway Administration if the Federal Highway Administration requests that a report be submitted.

## **9.0 EMPLOYEE ASSISTANCE PROGRAM**

An employee may request a referral to an Employee Assistance Program (EAP) for assessment, counseling and/or rehabilitation at any time. Participation in the Employee Assistance Program is voluntary, subject to the following:

- 9.1** Disciplinary action based on a violation of the alcohol and controlled substances prohibitions is not suspended by an employee's participation in the EAP.
- 9.2** When a driver or employee violates an alcohol or controlled substances prohibition, the driver or employee must be evaluated by a substance abuse professional (SAP) designated by the Town who shall determine what assistance, if any, the driver or employee needs in resolving problems associated with alcohol misuse and/or controlled substances use. The driver or employee may not take a return to duty drug or alcohol test until: (1) completion of a treatment program suggested by the SAP; and, (2) a determination by the Town, in conjunction with a recommendation by the SAP, that the driver or employee is fit for duty. The Town is not required to pay for the driver's or employee's rehabilitation. The additional testing which an employee may request must be paid for by the employee, in advance of the test(s).

## **10.0 COMPLIANCE WITH LAWS**

The Town shall comply with all federal, state and local laws and regulations regarding alcohol and/or controlled substances testing of CDL drivers. If there is a conflict between these procedures and a law, the federal, state, or local law shall prevail.